

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAWN PROCHASKA,

Plaintiff,

vs.

ANDREW M. SAUL, Commissioner of the
Social Security Administration,

Defendant.

4:18CV3060

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's motion for attorney fees, [Filing No. 22](#)¹ under the Social Security Act, [42 U.S.C. § 406\(b\)](#). Pursuant to sentence four of [42 U.S.C. § 405\(g\)](#), the Court entered an order and judgment reversing the Administrative Law Judge and finding the plaintiff eligible for disability benefits. Filing Nos. 14 and 15. The Court reversed and remanded this case to the Commissioner of the Social Security Administration ("defendant") for computation and determination of benefits. The parties agree that the plaintiff is entitled to fees under both the EAJA and [42 U.S.C. § 406\(b\)](#).

In her motion for payment of fees, plaintiff requested \$5,237.33 for fees, \$63.40 for expenses, and \$400.00 in costs under the EAJA for work performed in connection with the federal court action. [Filing No. 16](#). Plaintiff attached her request for fees pursuant to § 406(b) asking a total of \$15,908.25 minus the \$5,237.33 in EAJA funds that will be refunded to the plaintiff. Filing Nos. 22 and 23. See *also* contingency fee agreement, [Filing No. 23-1](#). The contingency fee, based on a withheld amount of 25% of total past

¹ Plaintiff previously requested fees under the Equal Access to Justice Act ("EAJA"), [28 U.S.C. § 2412](#). Filing Nos. 14, 15, 20 and 21.

due benefits paid to the plaintiff, offset by the EAJA fees, is authorized in this case. See [Gisbrecht v. Barnhart](#), 535 U.S. 789, 793 (2002).

Defendant responded indicating it has no objection to the EAJA fees but contends the EAJA fees in the amount of \$5,237.33 must be returned to the plaintiff. See [28 U.S.C. § 2412](#). [Filing No. 24](#). The Court, as well as the plaintiff, agree that these fees must be refunded. After carefully reviewing the record, the Court finds the plaintiff is entitled to the requested attorney fees.

THEREFORE, IT IS ORDERED THAT:

1. Plaintiff's motion for attorney fees, Filing No. 22, pursuant to the Social Security Act § 206(b)(1), [42 U.S.C. § 406\(b\)](#) in the amount of \$15,908.25, is granted.
2. Upon receipt of payment, plaintiff's counsel shall reimburse the EAJA fee in the amount of \$5,237.33 to the plaintiff.
3. A check for attorney's fees, expenses and costs shall be made payable to plaintiff's attorney, Edward A. Wicklund, at 250 South Clinton Street, Suite 210, Syracuse, NY 13202.
4. A separate judgment will be entered in accordance with this Memorandum and Order.

Dated this 28th day of January, 2020.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge